Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

ANDREA SMITH, PERSONAL REPRESENTATIVE OF THE ESTATE OF KELLY SNIDER SMITH, DECEASED,

Plaintiff/Petitioner

v.

BOTSFORD GENERAL HOSPITAL, A MICHIGAN NON-PROFIT CORPORATION

Defendant/Appellee.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Sixth Circuit's application of Michigan's "medical malpractice" damage cap conflicts with the universal consensus of federal courts that EMTALA actions do not sound in either negligence or medical malpractice.

II. Whether the Sixth Circuit's application of Michigan's cap to EMTALA actions violates the Seventh Amendment.

III. Whether M.C.L. 600.1483, as applied in this case, violates the Equal Protection Clause of the U.S. Constitution.

PARTIES TO THE PROCEEDINGS

Andrea Smith, Personal Representative of the Estate of Kelly Snider Smith, deceased, was the plaintiff below in the district court and is a citizen of Michigan. Andrea Smith was substituted as plaintiff when the previous Personal Representative of Smith's Estate, Willie Smith, died. Willie Smith was also a Michigan citizen.

Botsford General Hospital, a Michigan non-profit corporation, was the defendant below and is a citizen of Michigan.

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OPINIONS BELOW

The published opinion of the United States Court of Appeals for the Sixth Circuit, App. 2a, is reported at 419 F.3d 513 (6th Cir. 2005). That court's denial of Petitioner's petition for rehearing with a suggestion for *en banc* review, App. 43a, is unpublished.

The May 28, 2002 Memorandum and Order on Petitioner's motion to strike Defendant's affirmative defense under M.C.L. 600.1483, App. 18a, and February 9, 2004 Decision and Order denying Defendant's motion to alter or amend the judgment, App. 29a, entered by the United States District Court for the Eastern District of Michigan are unpublished.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 18, 2005. App. 17a. Petitioner's timely petition for rehearing with a suggestion for *en banc* review was denied on November 22, 2005. App. 43a. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amend. VII provides:

> In suits at common law, where the value in controversy shall not exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than